

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ROBERT A. MATHIS,

Plaintiff,

CASE NO. 1:13-CV-256

v.

HON. ROBERT J. JONKER

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

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**ORDER APPROVING AND ADOPTING**  
**REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Carmody's Report and Recommendation in this matter (docket # 28) and Plaintiff's Objections to the Magistrate Judge's Report and Recommendation (docket # 29). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections. The Court finds the Magistrate Judge's Report and Recommendation (docket # 28) is factually sound and legally correct.

The Magistrate Judge recommends entry of an order granting Plaintiff's motion for attorney fees, but only in the amount of \$2,678.75, rather than the \$3,901.57 counsel requests. The difference is the hourly rate claimed. Plaintiff's Objections reiterate and supplement arguments made in her motion papers. The Report and Recommendation already carefully, thoroughly, and accurately addresses those arguments. Plaintiff also says that the Magistrate Judge overlooked affidavits Plaintiff filed in support of her position. The affidavits do not change the Court's view that there is not sufficient basis to override the statutory limit of \$125 per hour in this case. The Magistrate Judge properly concluded that a reduced fee award paid directly to the Plaintiff is appropriate.

**ACCORDINGLY, IT IS ORDERED** that the Report and Recommendation of the Magistrate Judge (docket # 28) is approved and adopted as the opinion of the Court.

**IT IS FURTHER ORDERED** that the motion for attorney fees is **GRANTED IN PART AND DENIED IN PART** (docket # 21). An award of \$2,678.75 in attorney fees is granted in favor of Plaintiff and against Defendant. The award shall be added to the Judgment in favor of Plaintiff already entered in the case and shall be paid directly to Plaintiff.

/s/Robert J. Jonker  
ROBERT J. JONKER  
UNITED STATES DISTRICT JUDGE

Dated: August 21, 2014